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AT RICHMOND, OCTOBER 20, 2000

CASE NO. PUE000547

CASE NO. PUA000078

For authority to acquire and
dispose of utility assets:
Potomac River Station

On September 25, 2000, Potomac Electric Power Company ("PEPCO") and Southern Energy Potomac River, LLC ("SE-Potomac River"), filed their Joint Application of Potomac Electric Power Company and Southern Energy Potomac River, LLC ("Joint Application").¹ As required by the Utility Transfers Act, §§ 56-

¹ A replacement to Exhibit A, Volume 2 of the Joint Application was filed on September 27, 2000. The Joint Application was further corrected or supplemented on September 29, 2000, and October 17, 2000.

88 through 56-91 of the Code of Virginia, PEPCO seeks authority from the Commission to sell the generating units and related

facilities at its Potomac River Station, Alexandria, Virginia, and to lease the land upon which the facilities are located. SE-Potomac River seeks authorization to purchase the assets and lease the land.

According to materials included in the Joint Application, PEPCO has contracted to sell generating facilities in Maryland and Virginia, including the facilities covered by this application, to Southern Energy, Inc. At the closing of the transaction, Southern Energy, Inc., will assign its rights to its subsidiary, SE-Potomac River. (Jt. App. at 4 & n.5.)

While PEPCO is a Virginia public service company and a public utility, it has not provided electric service subject to Commission jurisdiction since 1986. Potomac Elec. Power Co., Case No. PUE850062, 1986 Ann. Rep. 290. PEPCO does provide less than 5 MW of power to Virginia Electric and Power Company in a border exchange transaction. (Jt. App. at 3.) PEPCO would continue to own and operate transmission facilities and a substation located at the Potomac River Station. (Id. at 4, 5-6.) In conjunction with the transfer, PEPCO seeks amendment of its certificate of public convenience and necessity to reflect the sale of the generating facilities. (Id. at 1, 6, 7.)

In the Joint Application, SE-Potomac River applied for a certificate of public convenience and necessity authorizing the acquisition and operation of the generating facilities at

Potomac River Station. (Jt. App. at 1-2, 6.) SE-Potomac River intends to sell all power from the Potomac River Station at wholesale. (Id. at 6, 8.) SE-Potomac River requests that the Commission exercise its authority to issue the certificate of public convenience and necessity under § 56-265.2 B of the Code of Virginia. SE-Potomac River seeks, pursuant to subsection B, exemption from the provisions of Chapter 10 (§§ 56-232 et seq.) of Title 56. (Jt. App. at 1-2, 8, 10.) Finally, SE-Potomac River also seeks approval to operate the generating facilities pursuant to § 56-580 D of the Code of Virginia. (Id. at 1, 8, 10.)

Upon consideration of the Joint Application, as corrected and supplemented, the Commission finds that these matters should be docketed, that notice should be given, and that the public should have an opportunity to comment and to request a hearing. We also direct the Commission Staff to investigate the Joint Application and file a report on its findings and recommendations.

The Joint Application raises two issues of statutory construction that the Commission must address. As noted, SE-Potomac River seeks a certificate and exemption from various provisions of Title 56 pursuant to § 56-265.2 B of the Code. That provision provides, in part, that "the Commission . . . may permit the *construction and operation* of electrical generating

facilities, which shall not be included in the rate base of any regulated utility" (Emphasis added.) According to the Joint Application no construction of electrical generating facilities is contemplated. The first issue we must consider is whether subsection B is applicable in this proceeding.

Likewise, SE-Potomac River also seeks Commission permission pursuant to § 56-580 D of the Code of Virginia. In language similar to that in § 56-265.2 B of the Code, § 56-580 D provides that "The Commission may permit the *construction and operation* of electrical generating facilities" after making certain findings. (Emphasis added.) SE-Potomac River raises the same issue we identified with regard to § 56-265.2 B, whether the subsection is applicable only when permission to acquire and operate generation facilities is sought. The Commission will direct PEPCO, SE-Potomac River, and the Staff to file memoranda addressing these issues.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-265.2 and related provisions of Title 56 of the Code of Virginia, the application for a certificate of public convenience and necessity is docketed as Case No. PUE000547, and all associated papers are filed therein.

(2) Pursuant to §§ 56-88 through 56-91 of the Code of Virginia, the petition for authority to dispose of and acquire utility assets is docketed as Case No. PUA000078.

(3) On or before October 27, 2000, PEPCO and SE-Potomac River shall serve a copy of the Joint Application, as corrected and supplemented, and a copy of this Order on the President of Virginia Electric and Power Company, the Mayor of the City of Alexandria, and the Director of the Virginia Department of Environmental Quality.

(4) Forthwith upon receipt of this Order PEPCO and SE-Potomac River shall make copies of the Joint Application, as corrected and supplemented, this Order, and all materials it may subsequently file in this proceeding available for public inspection at the Alexandria Public Library, Barrett Branch, 717 Queen Street, Alexandria, Virginia (Telephone: (703) 838-4555).

(5) On or before November 6, 2000, SE-Potomac River and PEPCO shall cause the following notice to be published as display advertising (not classified) once in a newspaper having general circulation in the City of Alexandria:

NOTICE TO THE PUBLIC OF A PETITION OF
POTOMAC ELECTRIC POWER COMPANY AND SOUTHERN
ENERGY POTOMAC RIVER, LLC, FOR AUTHORITY TO
DISPOSE OF AND TO ACQUIRE GENERATING
FACILITIES AT THE POTOMAC RIVER STATION,
ALEXANDRIA, VIRGINIA, AND AN APPLICATION OF
SOUTHERN ENERGY POTOMAC RIVER, LLC, FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO
ACQUIRE AND TO OPERATE GENERATING FACILITIES

Potomac Electric Power Company
("PEPCO") and Southern Energy Potomac River,
LLC ("SE-Potomac River"), have filed a joint

application with the State Corporation Commission seeking various regulatory approvals. PEPCO seeks authority to dispose of its generating units and related facilities located at the Potomac River Station, Alexandria, Virginia, and SE-Potomac River seeks authority to acquire these facilities. In addition, SE-Potomac River seeks a certificate of public convenience and necessity from the State Corporation Commission authorizing it to acquire and to operate these facilities.

PEPCO owns generation and transmission facilities located at the Potomac River Station, but it does not provide retail electric service in the Commonwealth of Virginia. PEPCO will retain ownership of transmission facilities and a substation located at the Potomac River Station.

Upon acquisition of the generating units and related facilities, SE-Potomac River intends to sell all the power from the Potomac River Station at wholesale. SE-Potomac River will not provide transmission or distribution services in Virginia. SE-Potomac River requests that its facilities be exempted from various utility regulatory provisions imposed by Virginia law.

A copy of the application and related materials is available for public inspection between the hours of 8:15 a.m. and 5:00 p.m. on Commission business days in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. A copy of the application and related materials is also available for public inspection during regular business hours at the Alexandria Public Library Barrett Branch, 717 Queen Street, Alexandria, Virginia (Telephone: (703) 838-4555).

Any interested person may submit written comments on the application.

Interested persons may also request a public hearing. Any request for public hearing must identify issues that cannot be resolved other than by oral testimony and cross-examination. Any written comments or requests for hearing should be filed by November 27, 2000, with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Correspondence should refer to Case Nos. PUE000547 and PUA000078. Copies of comments should be simultaneously sent to counsel to PEPCO, Gail D. Jaspen, Esquire, Reed Smith Hazel Thomas LLP, 901 East Byrd Street, Suite 1700, Richmond, Virginia 23219-4069 and to SE-Potomac River, Louis R. Monacell, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095.

POTOMAC ELECTRIC POWER COMPANY AND
SOUTHERN ENERGY POTOMAC RIVER, LLC

(6) Any interested person may file written comments on the Joint Application or may request a public hearing. Any request for a hearing shall identify issues which may be resolved only by oral testimony and cross-examination. Comments or requests for hearing should be filed by November 27, 2000, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any comments or requests for hearing should refer to Case Nos. PUE000547 and PUA000078. Copies of comments should be simultaneously sent to counsel to PEPCO, Gail D. Jaspen, Esquire, Reed Smith Hazel Thomas LLP, 901 East Byrd Street, Suite 1700, Richmond, Virginia 23219-4069 and to SE-Potomac River, Louis R. Monacell, Esquire,

Christian & Barton, L.L.P., 909 East Main Street, Suite 1200,
Richmond, Virginia 23219-3095.

(7) The Commission Staff shall review the application and, on or before December 6, 2000, shall file with the Clerk of the Commission an original and fifteen (15) copies of its report and shall serve a copy on all parties.

(8) On or before December 13, 2000, PEPCO and SE-Potomac River may file with the Clerk of the Commission an original and fifteen (15) copies of any comments on the Staff Report and shall serve a copy on all parties.

(9) On or before December 13, 2000, the parties and the Staff shall file memoranda on the identified issues of statutory interpretation.

(10) Rule 6:4 of the Commission's Rules of Practice and Procedure, Interrogatories to Parties or Requests for Production of Documents and Things, 5 VAC 5-10-480, shall be modified for this proceeding as follows: (i) Answers and objections shall be served within eight (8) days after service as provided by these Rules or after receipt of interrogatories delivered by other means (including facsimile or electronic transmission) followed by service as provided by these Rules; (ii) special motions upon the validity of any objections raised by answers shall be filed within three (3) working days of receipt of the objection; and (iii) answers, objections, and special motions shall be filed or

served by 3:00 p.m. of the due date, unless the Staff or party upon whom service must be made agrees in advance to other arrangements.

(11) On or before November 20, 2000, PEPCO and SE-Potomac River shall file with the Clerk of the Commission certificates of the service and posting ordered in (3) and (4) above and a certificate of the publication ordered in (5) above.

(12) This case be continued.